

Group V, claims 34-35, drawn to an antibody specific for the polypeptide having hemolytic activity.

The Examiner also required Applicants to select a single disclosed species as an "Additional Restriction to a Single Polypeptide, polynucleotide, or Antibody".

Applicants provisionally elect, with traverse, Group I, *i.e.*, claims 17-18, 22, 32, and 36, drawn to a polypeptide having hemolytic activity. Applicants traverse this requirement for the reasons set forth below.

A requirement for restriction is proper when (1) the inventions claimed are distinct *and* (2) a serious burden is placed on the Examiner if restriction is not required. M.P.E.P. §803.

In the instant application, the Examiner has failed to show that it would be a serious burden to examine these groups together, and particularly to examine the claims of Group I and Group V together. Group I, drawn to a polypeptide having hemolytic activity, and Group V, drawn to an antibody specific for the polypeptide having hemolytic activity, are related as antigen and antibody, and further are classified in the identical class. Thus, Applicants respectfully request reconsideration of the restriction, and particularly request that Group I and Group V be examined together.

Additionally, the Examiner has requested a "restriction" between sequences or molecules contained in a single independent claim. Applicants traverse this ostensible "restriction" because it is improper for two reasons. First, regardless of the Examiner's designation of this requirement as a "restriction", it is an election of

species requirement. Merely calling it something else does not change the fundamental nature of the requirement. Second, it is improper for the Examiner to force Applicants to carve up their independent claim. Applicants particularly note that while “two or more independent and distinct inventions may not be claimed in one national application,” this prohibition is qualified by the exception that “more than one species of an invention, not to exceed a reasonable number, may be specifically claimed in different claims in one national application, provided the application also includes an allowable claim generic to all the claimed species and all the claims to species in excess of one are written in dependent form (§1.75) or otherwise include all the limitations of the generic claim.” 37 C.F.R. §1.141 (2001).

In the instant application, Applicants have presented generic claim 17 that includes several different SEQ ID NOs, i.e., SEQ ID NO: 1, 2, 3, or 5. Further additional claims to each species could be added.

In order to be fully responsive, Applicants elect SEQ ID NO: 5, with traverse.

Even assuming, *arguendo*, that this election of species is a “restriction,” such a restriction would suffer from the same shortcomings identified above. Focussing on the specific SEQ ID NOs, because of the relationship between these sequences, a search would not be burdensome. As noted on page 20 of the specification, first full paragraph, and also in the Sequence Listing comments, SEQ ID NOs: 1, 2, and 3 are polypeptides which correspond to various subsets of SEQ ID NO: 5. Further, SEQ ID NO: 4 and SEQ ID NO: 5 are related as cDNA and protein encoded. Thus, a search on one of the full length species would necessarily encompass the other

shorter members. Alternatively, a search of the cDNA would overlap with a search of the corresponding translated protein. Therefore, a search of these claims together would not be burdensome. Applicants therefore respectfully request reconsideration of the restriction requirement.

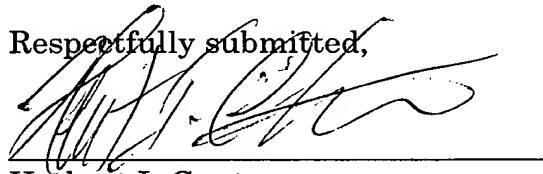
In the event that one or more generic claims are found allowable, however, Applicants request inclusion of the remaining claims directed to the provisionally non-elected species.

If there are any questions regarding this amendment or the application in general, a telephone call to the undersigned would be appreciated since this should expedite the prosecution of the application for all concerned.

If necessary to effect a timely response, this paper should be considered as a petition for an Extension of Time sufficient to effect a timely response, and please charge any deficiency in fees or credit any overpayments to Deposit Account No. 05-1323 (Docket #1830/49264).

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Respectfully submitted,



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